

Remarks

Following entry of this amendment, claims 30-41 are pending in the application.

Claim 39 has been amended to correct an obvious typographical error. Applicants believe no new matter is added herein. Consideration of the pending claims is requested.

Restriction Requirement

In response to the third restriction requirement, Applicants elect SEQ ID NO: 25, with traverse. Applicants expressly reserve the right to petition all of the restriction requirements received for the present application. SEQ ID NO: 25 is an oligonucleotide probe for detecting the quinolone resistance status of *E. Coli*. SEQ ID NO: 25 hybridizes to the quinolone resistance determining region (SEQ ID NO: 9) of the *gyrA* gene of *E. coli*.

As discussed in the previous response, it is not an undue burden on the Examiner to each the claimed polynucleotide sequences together. With regard to the remarks in the Office action: the Office action acknowledges that SEQ ID NO: 9, SEQ ID NO: 12, SEQ ID NO: 14 and SEQ ID NO: 16 all encode a polypeptide of identical amino acid sequence. However, the Office action alleges that since then polynucleotide sequences are different (“apples”) even though the encoded polypeptides is the same (a single “orange”) they simply can’t be examined together. The Office action alleges this is because the polynucleotides were isolated from different species of bacteria which have different biological properties (see page 4). Applicants do not deny that different species of bacteria have different biological properties. However, the presently claimed methods are used to detect a specific polynucleotide that encodes a protein with a defined function. All of the biological properties of the detected bacteria are not at issue. The claimed methods are performed using probes (which can be synthetically produced) that bind a specified nucleic acid sequence.

Applicants do not deny that MPEP states that “nucleotide sequences encoding different proteins are....deemed to be normally constitute independent and distinct inventions” (see the Office action at page 4. However, with regard to at least SEQ ID NO: 9, SEQ ID NO: 12, SEQ ID NO: 14 and SEQ ID NO: 16 this is simply NOT the situation in the present case. The polynucleotides set forth as SEQ ID NO: 9, SEQ ID NO: 12, SEQ ID NO: 14 and SEQ ID NO: 16 all encode exactly the SAME protein. As noted in the prior response, and as acknowledged in the Office action (see page 4), the MPEP § 2434 states: “[n]ucleotide sequences encoding the

same protein are not considered to be independent and distinct and will continue to be examined together.” Thus, it is clear that SEQ ID NO: 9 should be examined with at least SEQ ID NO: 12, SEQ ID NO: 14 and SEQ ID NO: 16.

In addition, as the QRDR proteins encoded by SEQ ID NO: 10, SEQ ID NO: 11, SEQ ID NO: 13 and SEQ ID NO: 15 differ from the polypeptide encoded by SEQ ID NO: 9 by at most two amino acids, and all of these nucleic acid sequence encode proteins with the same function. Thus, Applicants submit that all of SEQ ID NOs: 9-14 should be examined a single application. It would not represent a burden on the Patent Office to examine the closely related sequences in a single patent application.

Again, Applicants respectfully request reconsideration and withdrawal of the restriction requirement. In the unlikely event that any of the restriction requirements are maintained, the Applicants expressly reserve the right to petition the restriction requirements.

Conclusion

This is the third restriction requirement received for the subject application. The previous response (to the second restriction requirement) included an express request for a telephonic interview in the event that the prior restriction requirement was maintained, or if an additional restriction requirement was asserted. The undersigned again requests that *if an additional restriction requirement is asserted, or if the present restriction requirement is maintained, the Examiner is formally requested to contact the undersigned prior to issuance of the next Office action, in order to arrange a telephonic interview.* The undersigned has also left voicemails for Supervisory Examiner Shukla requesting a telephone interview, as it is believed that a brief discussion of the merits of the present application may expedite prosecution. The present request is submitted under MPEP §713.01, which indicates that an interview may be arranged in advance by a written request. *Applicants specifically request that Examiners Lu and Shukla contact the undersigned at the telephone number listed below to arrange a telephonic interview.* The issuance of multiple restriction requirements without the opportunity for a telephonic election or an interview places an undue burden on the Applicant.

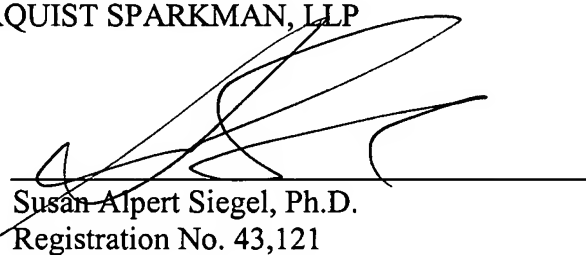
It is respectfully submitted that the amended claims submitted herewith should all be recombined and considered in the current case, and as such they are in a condition for substantive examination.

Respectfully submitted,

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